IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7082 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

HINDUSTAN COCA - COLA BEVERAGES PVT. LTD.

Versus

NAVINCHANDRA KANCHANLAL KAYAS

---

Appearance:

1. Special Civil Application No. 7082 of 2001

NANAVATI ASSOCIATES for Petitioner No. 1

MRS SANGEETA N PAHWA for Respondent No. 1

---

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 08/07/2002

ORAL JUDGEMENT

Rule. Ms. Sangeeta Pahwa, learned counsel for the respondent waives service of rule.

2. The short question that is to be considered in

this petition is whether the legal consultant engaged by the petitioner can be permitted to appear in the proceedings pending before the Labour Court in view of the objections raised by the otherside. It appears from the record of the petition that in Recovery Application No. 92 of 2001 pending in the Labour Court at Surat the petitioner submitted an application at Exh. 26 to permit its legal consultant Mr. Manubhai Shah to represent its case in the said proceedings. The respondents opposed this application by filing their reply at Exh. 34 stating therein that the consultant of the petitioner has no authority u/S. 36 of the Industrial Disputes Act, 1947 (for short 'the Act') to remain present in the Court and to represent the case of the petitioner. It is further objected on the ground that though the officers of the petitioner company are conversant with the provisions of law, only with a view to cause delay in the proceedings and to harass the workers, such unauthorised persons are being appointed to represent the case of the petitioner. In view of this objection, the Labour Court was required to decide this issue by passing appropriate order.

3. On perusal of the order passed by the Labour Court dated 18th July, 2001, it appears that the authority given in favour of Mr. Manubhai Shah has not been accepted by the Labour Court on two grounds, firstly that he is not falling in the category of the persons contained in sub-section (2) of section 36 and secondly because though he was required to submit an application in Form No. 26 in accordance with rule 86 of the Industrial Disputes Rules, 1966, it was not in that form. The Labour Court, therefore, held that said Manubhai Shah was not eligible to represent the case of the petitioner u/S. 36 (2) of the Act.

3.1. This order has been challenged in this petition. Mr. K.D. Gandhi, learned counsel appearing for the petitioner has submitted that the impugned order of the Labour Court is erroneous. According to Mr. Gandhi, sub-section (2) of section 36 of the Act is not exhaustive, but it only enumerates the types of persons who can represent the case of employer in the proceedings arising under the Act. This submission is sought to be substantiated by him by placing reliance on several decisions. The first decision to which my attention is drawn by Mr. Gandhi is rendered in the case of Utkal Automobiles Ltd. v/s. Presiding Officer, Industrial Tribunal, Orissa reported in 1996 LAB. I.C. at page 815. This judgment has already been considered by the Labour Court and it has arrived at conclusion that the same is not applicable to the facts of this case, because

in the present case the authority is not sought by filling up Form No. 26 and the application for permission is not in consonance with rule 86 of the aforesaid Rules. The second decision that has been relied on by the counsel for the petitioner is in the case of Paradip Port Trust v. Their Workmen reported in AIR 1977 S.C. at page 36 and the third decision is of Bombay High Court rendered in the case of Khadilkar (K.K.) v. Indian Hume Pipe co. Ltd., Bombay reported in 1967 L.L.J. at page 139. All these decisions have been sought to be relied on by Mr. Gandhi to support his contention that apart from section 36(2) the present consultant of the petitioner can be permitted to represent the case of the petitioner.

3.2. As against that, Ms. Sangeeta Pahwa, learned counsel for the respondent has drawn my attention to the contents of the application submitted by the petitioner at Exh. 26 wherein it has been categorically stated that Mr. Manubhai Shah has been appearing for many companies in different proceedings before the Labour Court and the Industrial Tribunal. She, therefore, submitted that he is a legal practitioner within the meaning of sub-section (4) of section 36 of the Act. She has for that purpose placed reliance on a judgment of the Division Bench of this Court rendered in the case of Pravin Soneji v. M/s. J.M. Baxi & co. reported 1984 G.L.H. at page 119, wherein this Court has considered a question whether the persons like Mr. Manubhai Shah can be covered under the provisions of sub-section (4) of section 36 of the Act.

4. It appears from he record and in particular the order passed by the Labour Court that this aspect as well as this decision of the Division Bench of this Court and also the aforesaid decisions of the Apex Court and Bombay High Court in respect of Section 36(2) have not been considered by the Labour Court, because the same were not cited before it. Since all this has remained unexplored before the Labour Court, it is desirable to remand the matter back to the Labour Court for reconsideration of it as a whole, afresh. In view thereof, without entering into the merits of the case, the impugned order is quashed and set aside and it is hereby directed that this matter be remanded back to the concerned Labour Court and the Labour Court is directed to reconsider application Exh. 26 afresh permitting both the parties to raise all the necessary contentions and to give its decision on the said application.

5. In the result, this petition is required to be allowed. Rule made absolute to the aforesaid extent with

no order as to costs.

[ Akshay H. Mehta, J. ]

* Pansala.